

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Petition of the People of the State) PR Doc. No. 94-105
of California and the Public Utilities)
Commission of the State of California)
)
To Retain Regulatory Authority Over)
Intrastate Cellular Service Rates)

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits its comments on the Draft Protective Order presented by the Commission at an ex parte meeting held on September 30, 1994, in the above-captioned proceeding.² For the reasons described below, CTIA opposes the imposition of a protective order at this time.

The Draft Protective Order addresses confidentiality issues raised by the State of California in its Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate

¹ CTIA is a trade association whose members provide commercial mobile radio services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry.

² In the Matter of Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates, PR Docket No. 94-105 (August 9, 1994).

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Cellular Service Rates, filed August 8, 1994, in the above-captioned proceeding. While the draft Order broadly defines the confidential information that is the subject of the Order, CTIA maintains that it is premature to address the terms of any protective order at this time.

Any imposition of a protective order in this proceeding must be contingent upon the Commission first determining whether any person is entitled to access to this information. CTIA and the cellular carriers whose confidential data is at issue have not requested access to this information, and CTIA has no desire to comment on carrier specific data that is commercially sensitive. The one party that has requested access to the carriers' confidential information, the National Cellular Resellers Association ("NCRA"), already had an opportunity to obtain access to this data through participation in the state proceeding in California. In any event, the Commission has yet to determine whether NCRA has provided sufficient justification for granting such access. Until the Commission makes its determination, it is premature as to whether a protective order is an appropriate remedy for this matter.

Second, the cellular carriers participating in this proceeding are not able to make an informed response to the Commission's request for a Protective Order because in this case, unlike *Ellipsat Corp.*, FOIA Control No. 92-83, 7 FCC Rcd. 3595 (1992), the cellular carriers do not know what

confidential information has been submitted to the Commission by the State of California. Accordingly, the cellular carriers are understandably reluctant to agree to the terms of a protective order at a time when they do not know the type (or types) of confidential and commercially sensitive data that have been selected by the State of California. At a minimum, before the cellular carriers are asked to discuss the terms of Protective Order, the State of California should disclose to each carrier the carrier-specific information that the state's petition sets forth. Only after the cellular carriers have been informed as to the nature of their confidential data that the State of California has placed in issue can they make informed, knowing decisions concerning the nature and scope of any protective order. Thus, at this time, it is premature to ask the parties to agree to such an order.

CONCLUSION

For the foregoing reasons, CTIA opposes imposition of a protective order at this time.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

A handwritten signature in dark ink, appearing to read "Michael F. Altschul", written over a horizontal line.

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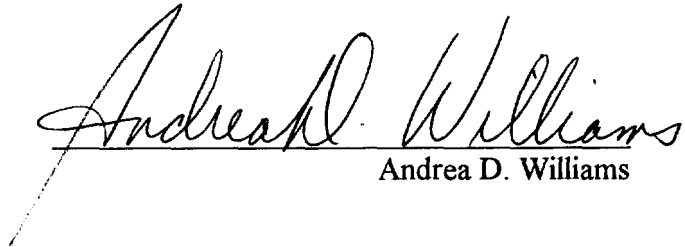
October 7, 1994

CERTIFICATE OF SERVICE

I, Andrea D. Williams, hereby certify that on this 7th day of October, 1994 copies of the foregoing Comments of the Cellular Telecommunications Industry Association were served by hand delivery upon the following parties:

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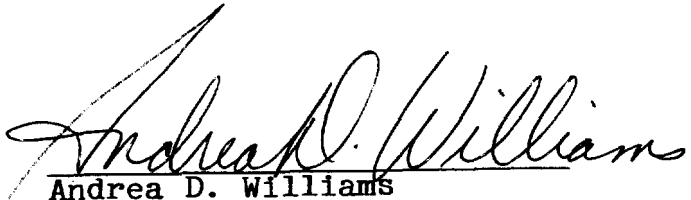
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